

Report of the Land Stewardship and Conservation Task Force

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Chapter 2

Conservation Service Delivery Methods

This chapter discusses how agencies deliver conservation service, focusing on one of the most popular methods: land acquisition. It will describe some of the various agencies, organizations, and programs that deliver conservation and stewardship in Kentucky. Given that there are more than 200 agencies that are involved in environmental advocacy, including land conservation and forest stewardship, this chapter will focus principally on the state and local agencies that receive Heritage Land Conservation Fund support. It will identify the agency's role and mission in delivering land conservation service.

Different Methods of Land Enrollment and Land Acquisition

One role conservation agencies play is to enroll private land for participation in land conservation programs. Enrollment in a conservation program can be accomplished through a variety of methods such as direct regulation of land use, direct purchase of the land or its development rights, payment to landholders to implement specific practices, or landholder education (Vantreese).

Most public and private agencies use voluntary methods, meaning that the seller is under no obligation to participate. However, conservation methods can be mandatory, such as the exercise of eminent domain or direct environmental regulation to protect critical habitat for endangered or threatened species (National Research Council). Florida has used the right of eminent domain to compel an owner within a contiguous group of acquisitions to sell the land (Farr. Testimony). Conservation methods tend to be economic in nature, meaning that there is some sort of financial payment to the landholder. However, some programs offer technical assistance or education in lieu of direct payment or subsidy to the landholder. Finally, some methods transfer the land to public ownership while others retain private ownership (National Research Council).

A review of acquisitions from the Division of Real Properties in the Finance and Administration Cabinet shows that fee simple acquisition and less-than-fee acquisition are the most popular tools utilized by Kentucky conservation agencies (Brownlee. Kentucky). Fee simple acquisition means that the agency will own the property without anyone having a future claim to the property (Singer). Often the land is transferred from private ownership to the public domain.

Less-than-fee acquisition means the current owner retains his or her ownership of the land. There is no transfer to the public domain (Singer). Less-than-fee includes conservation easements and environmental covenants. Both the easement and the covenant place a binding limitation on the use of the land that would pass to successive owners. Two popular less-than-fee programs in Kentucky are the Purchase of Development Rights and the Purchase of Agricultural Conservation Easements. Both pay to limit "development" of the land.

Several types of conservation tools used in Kentucky are primarily noneconomic in nature or offer limited financial assistance to a landowner. These are normally characterized as stewardship programs, cost-share programs, land-use management programs, and best management practices. The principal tool is technical or educational assistance on how to best use the land for some specified conservation purpose. The Forest Stewardship Program, the Sustainable Forest Outreach Initiative, and the Conservation Reserve Enhancement Program are popular conservation programs that provide technical assistance and some cost-share funds for implementing conservation measures. Oftentimes the attractiveness of these programs is the ability to improve the commercial viability of the land for the production of commodity like timber or certain crops.

Acquisitions by State Agencies and Land Available for Acquisition

Appendix B shows the amount of acreage reported by state agencies that is under the agency's ownership, control, protection, preservation, or management. The Division of Conservation shows the most acreage under a conservation program. The division offers cost-share and land-use management programs to encourage conservation but does not take an ownership in the land. The agency with the greatest amount of acreage that would be under direct ownership or control of a state agency is the Kentucky Department of Fish and Wildlife Resources (KDFWR) with 1 million acres. KDFWR has identified about 84,000 acres available for acquisition at a cost of \$22 million. Otherwise, remaining agencies own or control between 2,450 and 58,413 acres of land. Land identified by those agencies for acquisition ranges between 126,000 acres and as little as 675 acres. Land available for acquisition is presented in Appendix C.

Land Acquisition Process

The land acquisition process is straightforward from a conceptual standpoint. The land is "identified and appraised, a price is negotiated, the escrow established, and the titled is transferred" (National Research Council). In the private sector, a purchase can be accomplished in less than a month. In the public sector, it may take a state agency more than a year to acquire title to a parcel of land. The length and complexity of the land acquisition process was one of the chief complaints identified by various conservation agencies engaged in land acquisition. Appendix D summarizes survey responses from key agencies involved in public land acquisition in Kentucky. On average, land acquisitions take six to nine months to complete, but some are not completed for as long as two years. The process is detailed.

There are many reasons why the public land acquisition process may take longer. Unlike the private sector, the public land acquisition process is governed by multiple rules and procedures designed to protect the public interest. These rules and procedures have the consequence of extending the duration of the process, which can pose a problem for land conservation programs. It is difficult to retain willing sellers for a long period of time. The cost of carrying the property for a year or more may make a private-party sale more advantageous than placing the land under a conservation program. In addition, there is no prioritization for allowing critical cases to jump ahead in the process, even if the acquisition would be lost if it takes more time.

To understand how the acquisition process impacts land conservation programs, it is important to understand how the land acquisition process works. Appendix A, a land acquisition flow chart, demonstrates the complexity of the public land acquisition process.

First, KRS 56.470 requires all real estate transactions for state agencies to be conducted through the Finance and Administration Cabinet's Division of Real Properties. There are some exceptions identified in Finance and Administration Policy 220-14-00. Some entities handle their own acquisitions. This is true for right-of-way land acquisitions for the Transportation Cabinet, land acquisitions for the Kentucky Community and Technical College System, and certain universities that administer their own real properties.

Second, there are different types of acquisitions handled by the division: fee simple, permanent easements, mineral rights, agreements held with other entities, and right-of-ways. The Division of Real Properties administers all land acquisition requests and ensures compliance with applicable state and federal requirements and policy guidelines. For example, there are specific acquisition requirements in the Heritage Land Conservation Fund statutes. If an agency utilizes federal funds such as Forest Legacy Program dollars, there may be additional requirements on timber or land surveys.

The Finance and Administration Policy stipulates that the lowest appraised value be used as the basis for the offer, and the appraisals are predicated on the development value of the property. However, for rural lands, the development value may be very low and fail to account for the value associated with protecting endangered species or completing a continuous corridor for a wildlife management area. Requiring the lowest price per acre for determining the offer makes the process responsive to market prices but unresponsive to the public welfare value of land conservation.

KRS 58.470 and KRS 45A.045 require the division to use the Model Procurement Code competitive bidding requirements for different services such as the title survey, appraisal, or timber survey. The Division of Real Properties uses precertified vendor lists to expedite the process, but advertising and receiving bids even in a limited way adds additional time to the process. In addition, Finance and Administration Policy requires two appraisals for acquisitions over \$200,000; and if the cost of the appraisal or service is expected to be in excess of \$1,000, then the Exceptions Committee in the Finance and Administration Cabinet must review and approve the expense (Brownlee. Personal Interview).

Third, the workload in the Division of Real Properties fluctuates. Information supplied by the division, which is contained in Table 2.1, shows that the number of acres procured from one fiscal year to the next can vary widely. The size and complexity of any given acquisition project can influence the process. All acquisition projects are unique in nature and do not conform easily to a formula-driven review.

Appendix A

